

ESTTA Tracking number: **ESTTA414106**

Filing date: **06/13/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053703
Party	Defendant Nature's Grilling Products LLC dba NRG International LLC
Correspondence Address	DAVID L PARDUE SWIFT CURRIE MCGHEE & HIERS LLP SUITE 300 THE PEACHTREE, 1355 PEACHTREE STREET NE ATLANTA, GA 30309 UNITED STATES david.pardue@swiftcurrie.com, barton.black@swiftcurrie.com, rashmi@swiftcurrie.com
Submission	Other Motions/Papers
Filer's Name	David L. Pardue
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Signature	/s/ David L. Pardue
Date	06/13/2011
Attachments	Registrant's Notice of Request to Surrender.pdf ( 14 pages )(597650 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No.: 3,221,991  
Mark: NATURE'S MESQUITE (& design)  
Registered: March 27, 2007

In re Registration No.: 3,925,901  
Mark: NATURE'S GRILLING (& design)  
Registered: March 1, 2011

ROYAL OAK ENTERPRISES, LLC,

Petitioner,

VS.

Cancellation No. 92053703

NATURE'S GRILLING PRODUCTS LLC,  
dba NRG INTERNATIONAL LLC,

Registrant.

## REGISTRANT'S NOTICE OF REQUEST TO SURRENDER

Registrant Nature's Grilling Products LLC, dba NRG International LLC (hereinafter "NGP") hereby notifies the Trademark Trial and Appeal Board of its repeated efforts to request that Petitioner Royal Oak Enterprises, LLC (hereinafter "Royal Oak") voluntarily consent to the surrender by NGP of U.S. Registration 3221991 for the NATURE'S MESQUITE mark.

Attached herewith is correspondence between NGP and Royal Oak in which NGP has requested Royal Oak's consent to the surrender of the '991 Registration and in which Royal Oak has placed demands on its willingness to consent. *See* Exhibit A. Even though NGP is not required under Trademark Law to comply with Royal Oak's demands prior to surrendering the '991 Registration, NGP has complied with Royal Oak's demands that: (1) NGP removes photographs of the packaging of its products from its website that contain the NATURE'S MESQUITE mark.

and (2) that NGP will not later renew the mark or file for any other marks similar to those in dispute until final resolution of the TTAB proceeding and the district court litigation.

Accordingly, NGP does not see any reason why Royal Oak would oppose the voluntary surrender of the '991 Registration, other than to frustrate NGP's efforts to suspend the TTAB proceeding in light of the civil case.

This 13<sup>th</sup> day of June, 2011.

Respectfully submitted,

/s/ David L. Pardue  
David L. Pardue  
Georgia Bar No. 567217  
david.pardue@swiftcurrie.com  
D. Barton Black  
Georgia Bar No. 119977  
barton.black@swiftcurrie.com

*Attorneys for Nature's Grilling Products,  
LLC dba NRG International LLC*

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# **EXHIBIT A**

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April 28, 2011

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Via Electronic & Certified Mail

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N. Andrew Crain, Esq.

Thomas, Kayden, Horstemeyer & Risley, LLP

600 Galleria Parkway, S.E.

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Re: Royal Oak Enterprises, LLC v. Nature's Grilling Products, LLC  
In the United States District Court for Northern District of Georgia  
Civil Action File No.: 1:10-CV-02494-HTW

Royal Oak Enterprises, LLC v. Nature's Grilling Products LLC dba NRG  
International LLC, Trademark Trial and Appeal Board  
Cancellation No. 92053703

Dear Andrew:

Nature's Grilling Products, LLC ("Nature's Grilling") has ceased using U.S. Trademark Registration No. 3,221,991 ("the '991 Registration") for NATURE'S MESQUITE in commerce or in any aspect of its business. In fact, Nature's Grilling has not used the '991 Registration for sometime, and it does not have any business purpose for maintaining the registration. Accordingly, Nature's Grilling wishes to voluntarily surrender its registration of the '991 Registration.

However, because the '991 Registration is currently one of the subjects of the above-stated cancellation proceeding with Royal Oak, Nature's Grilling requests your consent to voluntarily surrender the mark. Please let us know if you will grant your consent, and we will

SWIFT, CURRIE, MCGHEE & HIERS, LLP

Mr. Andrew Crain

April 28, 2011

Page 2

prepare a filing to submit to the Trademark Trial and Appeal Board indicating our joint consent to the surrender of the '991 Registration.

Please respond by May 3, 2011 to let us know if you will consent. Thank you very much for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David L. Pardue', with a long horizontal flourish extending to the right.

David L. Pardue

DLP:dbb

May 3, 2011

David L. Pardue, Esq.  
Swift, Currie, McGhee & Hiers, LLP  
1355 Peachtree Street, N.E.  
Suite 300  
Atlanta, Georgia 30309-3231

via Email ([david.pardue@swiftcurrie.com](mailto:david.pardue@swiftcurrie.com))

Re: Royal Oak Enterprises, LLC v. Nature's Grilling Products, LLC  
Cancellation No. 92053703  
Our File No.: 11325.7030

Dear David:

This letter is in response to your letter of April 28, 2011 concerning U.S. Trademark Registration No. 3,221,991 ("the '991 Registration") for NATURE'S MESQUITE. We are confused by your letter and request clarification so that we may properly understand the import of your request.

In your letter, you state that your client "has ceased using the '991 Registration in commerce or in any aspect of its business" and that your client "has not used the '991 Registration for sometime." We initially contemplated that you meant your client is no longer using the NATURE'S MESQUITE trademark, but our review of your client's website reveals that it still offers a product under the NATURE'S MESQUITE marks and still makes use of the mark in the top banner of the website. I have attached a printout from your client's website showing those uses.

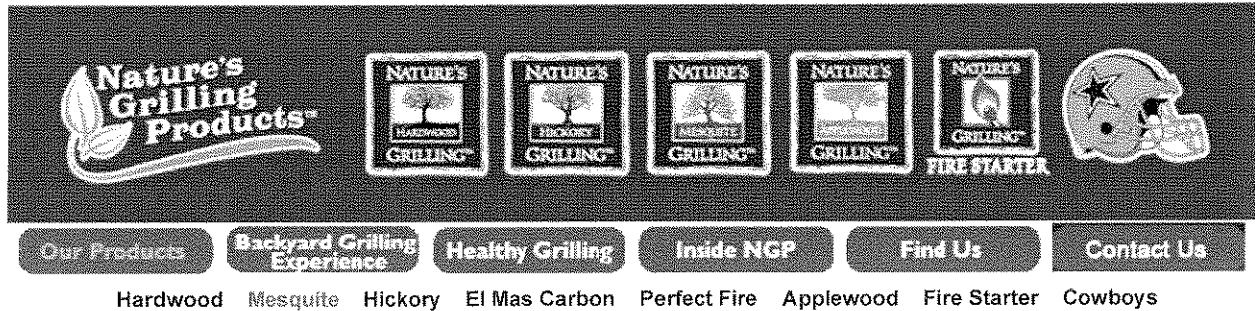
If your client is still using the NATURE'S MESQUITE mark, then the meaning of your letter is unclear to us. Please clarify this issue at your earliest convenience.

Sincerely,



N. Andrew Crain  
[andrew.crain@tkhr.com](mailto:andrew.crain@tkhr.com)

Attachment:  
(<http://www.naturesgrilling.com/mesquite.cfm?vSub=1&vSNav=1>)



## OUR PRODUCTS



### NATURE'S GRILLING™ MESQUITE



Nature's Grilling™ Mesquite 100% Natural Wood Charcoal, Cooking Chunks and Smoking Chips

Nature's Grilling™ Mesquite Wood Charcoal, Cooking Chunks and Smoking Chips delicately enhance the flavor of grilled food, infusing mellow fragrance and hearty taste. Natural mesquite is favored among grilling enthusiasts for its sweet, aromatic smoke.



Nature's Grilling™ Mesquite 100% Natural Wood Charcoal, 6.6 lb bag

Nature's Grilling™ Mesquite 100% Natural Cooking Chunks, 1/5 cubic feet

Nature's Grilling™ Mesquite 100% Natural Smoking Chips, 160 cubic inches

#### Product Reviews



### Recommended Cooking



Beef – Kabobs, Tenderloins, Hamburgers, T-Bone, NY Strip, Filet Mignon



Chicken – Breast



Fish – Salmon



Pork – Brats, Sausage, Hot Dogs, Chops

#### Our Vision

The business mission of Nature's Grilling Products is to bring superior, 100% natural grilling products to you. Our environmental mission is to protect the fragile ecosystems from which these products are harvested. We source our products from only those regions that meet our strict sustainable resource management practices. We believe you will enjoy these superior, ecofriendly products and savor the experience of grilling with 100% natural charcoals. All of our products are designed to satisfy your desire for superior grilled foods and to protect the environments from which they are sourced. **Live Naturally, Grill Naturally™** – that is our pledge we make to you.

NGP Buzz

Site Developed by: LNR Consulting Inc.



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May 3, 2011

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Atlanta, Georgia 30339

Re: Royal Oak Enterprises, LLC v. Nature's Grilling Products LLC dba NRG  
International LLC, Trademark Trial and Appeal Board  
Cancellation No. 92053703

Dear Andrew:

I am responding to your correspondence dated May 3, 2011, regarding our request that you consent to our surrender of the NATURE'S MESQUITE mark. Your letter asks about the depiction of the mark on pictures of bags that apparently appear on the Nature's Grilling Products ("NGP"). You also state, inaccurately, that the top banner contains the NATURE'S MESQUITE mark. The screen capture you sent me does not even have the NATURE'S MESQUITE mark on the top banner. It does depict three bags with the NATURE'S GRILLING mark.

NGP no longer uses the NATURE'S MESQUITE mark in commerce. It ceased selling products with the mark years ago. The pictures on the website must be left over from the period years ago when they did use the mark in commerce. As you know, however, pursuant to 15 U.S.C. § 1127 and supporting case law, having a picture on a website is not a use in commerce of a mark for any purposes. We would be happy to instruct NGP to take down the photographs, but it doesn't affect the fact that NGP no longer wants the mark, no longer uses the mark, and no longer wishes to pay for it. NGP merely wants to surrender federal protection for the mark.

SWIFT, CURRIE, MCGHEE & HIERS, LLP

Mr. Andrew Crain

May 3, 2011

Page 2

Hopefully, this clears up the issue. Please respond with an answer as to the surrender of the mark by the close of business Thursday, May 5, 2011. I will be on a leave of absence from May 7-14, as you are aware. Thank you for your attention to this matter.

Yours very truly,

A handwritten signature in black ink, appearing to read 'David L. Pardue', with a long horizontal flourish extending to the right.

David L. Pardue

DLP1/dbb

cc: Natalie Bennett (*via email only to [Natalie.Bennett@tkhr.com](mailto:Natalie.Bennett@tkhr.com)*)

May 5, 2011

David L. Pardue, Esq.  
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via Email ([david.pardue@swiftcurrie.com](mailto:david.pardue@swiftcurrie.com))

Re: *Royal Oak Enterprises, LLC v. Nature's Grilling Products, LLC*  
Cancellation No. 92053703  
Our File No.: 11325.7030

Dear Mr. Pardue:

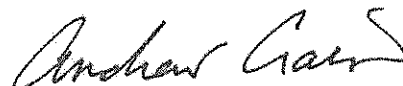
This letter is in response to your letter of May 3, 2011 concerning NGP's proposal to surrender the NATURE'S MESQUITE registration for cancellation. While I understand that you would like a final response by today, we are, unfortunately, unable to provide it. Specifically, we have not had an opportunity to communicate with our client about your inquiry, but we also believe that more information about the nature of your request is needed before we can actually do so.

I am confident that my client will inquire as to whether your client is no longer using the mark. Although I appreciate your indications that your client stopped selling products bearing the mark years ago, we are still unclear about that issue. As we previously noted, your client's website prominently displays photos of bags bearing the NATURE'S MESQUITE mark. Clearly, we believe that all such depictions of the mark should be removed, which you seemed to suggest could be easily done.

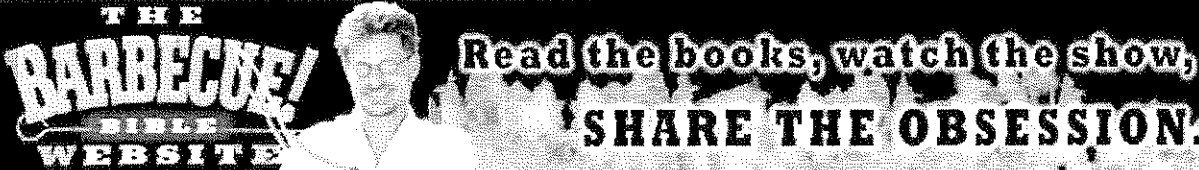
In addition, a quick Internet search reveals a January 16, 2011 posting in a barbecuebible.com discussion group in which the author writes that he tried NATURE'S MESQUITE charcoal "a couple of weekends ago." A copy of that posting is attached.

Until we can confirm that your client has ceased all use of the NATURE'S MESQUITE mark, we cannot advise our client to agree to your proposal. Moreover, we also request confirmation from your client that it will not later renew the mark or file for any other marks similar to those in dispute until final resolution of the TTAB proceeding and the district court litigation.

Sincerely,



N. Andrew Crain  
[andrew.crain@tkhr.com](mailto:andrew.crain@tkhr.com)



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<a href="#">FAQ</a>	<a href="#">SEARCH</a>	<a href="#">MEMBERLIST</a>	<a href="#">USERGROUPS</a>	<a href="#">REGISTER</a>	<a href="#">LOG IN TO CHECK YOUR PRIVATE MESSAGES</a>
<a href="#">LOG IN</a>					

## Charcoal Reviews...

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AUTHOR	MESSAGE
<p><b>Dyal_SC</b> well done</p> <p style="text-align: center;">👍👍👍👍👍</p> <p>Joined: 27 Dec 2009 Posts: 1211 Location: Lexington, SC</p>	<p>Posted: Sun Jan 16, 2011 12:11 pm Post subject: Charcoal Reviews...</p> <p>I've been trying to find the best bang for my buck when it comes to my charcoal. So far, the Wicked Good Charcoal Weekend Warrior Blend has been the best, IMHO, when it comes to maintaining steady temps, long-lasting burn time and low ash production. However, I haven't tried too many brands. The only problem with Wicked Good is that I can't get it anywhere locally, and it's not worth it considering the shipping cost.</p> <p>I just came across this website, and it looks like some pretty good information. Interesting enough, I noticed that the Publix Greenwise coals got a good rating, with "very low" ash production and "very high" burn time.</p> <p><a href="http://www.rakedwhiz.com/lumpindexpage.htm?bag">http://www.rakedwhiz.com/lumpindexpage.htm?bag</a></p> <p>I don't know how accurate this information is, but I'm going to go pick up some Publix brand charcoal and take a crack at it. I'll let y'all know what I find.</p> <p>CG Duo with SFB ECB</p> <p><a href="#">Back to top</a></p>
<p><b>BBcue-Z</b> well done</p> <p style="text-align: center;">👍👍👍👍👍</p> <p>Joined: 19 Jan 2004 Posts: 2580 Location: Atlanta-GA</p>	<p>Posted: Sun Jan 16, 2011 1:00 pm Post subject:</p> <p>Dayl, I agree with you 100% on the Wicked Good lump Charcoal. Yard Burner gave us the link to that website and I've been trying a lot of brands reviewed on it. I tried their number one rated charcoal "Nature's Mesquite Charcoal" a couple of weekends ago, and it did not come close to the Wicked Good. I've converted to lump charcoal almost exclusively and as I said I've tried many brands and wasted so much money on some. My number one choice is Wicked Good charcoal-weekend Warrior blend and I'm sticking with it. My second choice would be the Canadian Basque Maple Hardwood Lump. It imparts a nice and sweet flavor and aroma with minimal ashes. I just wish it came in bigger chunks.</p> <p>I can find the Wicked Good charcoal at one store only, which is Ace Hardware in Atlanta- none of the others carry it. This is an inconvenience, but if I plan ahead, I guess I'd be ok. It cost me about \$20 a bag and it last a long time.</p> <p>I guess what I'm trying to say, don't waste your money, just stick the "Wicked Good Charcoal"</p> <p style="text-align: center;"><b>GEORGIA</b> <b>BBcue-Z</b></p> <p><a href="#">Back to top</a></p>
<p><b>bourj</b> medium</p> <p style="text-align: center;">👍👍👍</p> <p>Joined: 20 Jul 2004 Posts: 134 Location: Chicago suburbs</p>	<p>Posted: Sun Jan 16, 2011 6:49 pm Post subject:</p> <p>Thanks for the info, both of you. Looks like they carry Wicked Good at a BBQ store not too far from my work. I may swing by there tomorrow and pick some up.</p> <p>Genesis Silver B WSM "A vegetarian hosting a barbecue is like a Quaker hosting an orgy." - 5.16.07</p>

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June 13, 2011

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OF COUNSEL

Via Electronic Mail only to [andrew.crain@tkhr.com](mailto:andrew.crain@tkhr.com) and  
Via U.S. Mail to

N. Andrew Crain, Esq.  
Thomas, Kayden, Horstemeyer & Risley, LLP  
600 Galleria Parkway, S.E.  
Suite 1500  
Atlanta, Georgia 30339

Re: Royal Oak Enterprises, LLC v. Nature's Grilling Products LLC dba NRG  
International LLC, Trademark Trial and Appeal Board  
Cancellation No. 92053703

Dear Andrew:

We are responding to your May 5 letter about the Nature's Mesquite trademark. As you probably know, Memorial Day is the peak of the year in the charcoal business so our small client had little time in May to focus on this distraction. Nonetheless, in answer to your query, Nature's Grilling Products ("NGP") is not interested in renewing the Nature's Mesquite mark. Also, it will not file any other marks with "Nature" in them (or any similar word like Nature's, Natur, etc.) during the dispute. We agree to these terms in your letter.

As for the NGP website, we understand the photographs complained of have been removed. As for the internet web page you sent us, we of course do not control what is said on message boards and cannot speak for the writer. However, we reiterate that the Nature's Mesquite mark was terminated from use when "Nature's Grilling" became the brand name, several years ago. A conservative estimate would be that the last bag of inventory with that mark on it went out in approximately April, 2009, likely sooner. It is inconceivable that the writer could have bought Nature's Mesquite off of the shelf of a retail store at this late date. We suspect that he made a mistake or put the quotes into the post to signify that he was really

SWIFT, CURRIE, MCGHEE & HIERS, LLP

Mr. Andrew Crain

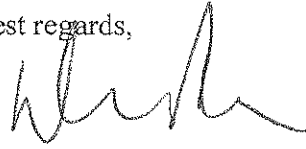
June 13, 2011

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referring to Nature's Grilling – Mesquite. We do market mesquite products, but only under the Nature's Grilling brand. The same is true for the other products we sell - hickory, apple, etc. They are all branded under Nature's Grilling.

In summary, we want to make it loud and clear that we have not sold Nature's Mesquite in commerce for at least two years and do not want to register it again in the future. Therefore, please let us know that Royal Oak accepts our surrender of the mark Nature's Mesquite. Thank you for your attention to this matter.

Best regards,

A handwritten signature in black ink, appearing to read 'D. Pardue', with a stylized, cursive flourish at the end.

David L. Pardue

DLP1:dbb

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a true and correct copy of the foregoing ***REGISTRANT'S NOTICE OF REQUEST TO SURRENDER*** has been served by email and by first class mail, postage prepaid, upon the following counsel of record for Petitioner.

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This 13<sup>th</sup> day of June, 2011.

/s/ David L. Pardue  
David L. Pardue  
Georgia Bar No. 561217  
[david.pardue@swiftcurrie.com](mailto:david.pardue@swiftcurrie.com)

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